Basis Statement

Chapter 2 Aquaculture Lease Regulations, Sections:
Chapter 2.10 Application Requirements,
Chapter 2.15 Notice of Lease Application and Hearing,
Chapter 2.37 Decision,
Chapter 2.40 Lease Issuance,
Chapter 2.64 Experimental Aquaculture Lease and
Chapter 2.75 Minimum Lease Maintenance Standards

These rules have been developed as a result of a Department-initiated review of the aquaculture leasing program completed in January, 2002 and comments received during a separate rulemaking proceeding in May, 2002 initiated as a result of a citizen's petition for rulemaking submitted by the Conservation Law Foundation and the East Penobscot Bay Environmental Alliance.

The proposed changes seek to improve the quality of information that is contained in lease applications, increase the public notice and input on proposed aquaculture leases, and change how the Department reviews a completed application.

The proposed regulation amendments would make changes to the lease application requirements for standard and limited-purpose leases; mandate a Department site review for limited-purpose lease applications; add a pre-application meeting with the Department for standard applicants; add the option for the Department to hold a public scoping session for any lease application; clarify the navigation and source sections in the decision standards; repeal the option to waive the 2,000 foot separation between new finfish type leases; prorate the bonding requirement for standard and limited-purpose leases with structures greater or less than 400 feet square area; bonds for finfish type lease would increase to $25K; and additional language on all leaseholder's obligations to collect trash and debris originating from their lease sites.

Summary of Comments

Chapter 2 Aquaculture Lease Regulations, Sections:
Chapter 2.10 Application Requirements,
Chapter 2.15 Notice of Lease Application and Hearing,
Chapter 2.37 Decision,
Chapter 2.40 Lease Issuance,
Chapter 2.64 Experimental Aquaculture Lease and
Chapter 2.75 Minimum Lease Maintenance Standards

Hearing attendees

Three hearings were held on January 7, 8, and 9th, 2003 in Ellsworth, Portland, and Eastport that were attended by 53 individuals.

Laurice Churchill, DMR was the hearing officer for all three hearings. Andrew Fisk, DMR attended and presented a summary of the rules at each hearing.

January 7, 2003, Ellsworth

Ciona Ulbrich
John Dittmar
Sally Mills
Michael Briggs
Terry Towne
Jesse Leach
Eric Moran
Jane McCloskey
Sally & Jim Littlefield
Steve Perrin
George Smith
Roger Fleming
Dennis Damon
Bill Shaw
Mary Costigan, DMR
Marsden & Donna Brewer
Maggie Williams
Susan Braley
Sebastian Belle
Mark Peterson
Laurie Schreiber
Leo & Gloria Siegal
Shirley Carville
Ron Huber
Chris Hamilton
Steve Page
Edith Howland
Mike Tansey
Sarah McCloskey

January 8, 2003 - Portland

Bob Gerber
Jim Wallace
Chris Heinig
Steve Kampiak
Mary Costigan, DMR
John Phillips
Sean Mahoney
Susan Polans
Frank Connelly

January 9, 2003 – Eastport

Chris Spruce
Georgiana Kendall
Paul Thompson
Steve Page
Tom Smith
David Turner
Stephen Ellis
Bob Peacock
Marie Holmes
William Kendall
David Morang
Susan Plachy
Marilyn Dowling
Jane McCloskey
Jeff Kaelin
Sebastian Belle

Twenty-two (22) individuals, businesses, organizations, municipalities, or agencies submitted written comments by the close of the comment period on January 21, 2003.

Written comments were received from:

Sebastian Belle, Maine Aquaculture Association
James & Susan Braley
Charles Claggett
Roger Fleming, Conservation Law Foundation
Robert Gerber, East Penobscot Bay Environmental Alliance
Chris Hamilton, Maine Coast Heritage Trust
Peter Horton
Stephen Johnson, Stonington Harbor Master
Mark Kesselring, Stolt Sea Farm
William Lamb
George & Bobbi Lehigh
Jane McCloskey
Sean Mahoney, Verrill & Dana for Friends of Blue Hill Bay & Roque Island Gardner Homestead Corporation
Vivian Newman, Sierra Club
Steve Perrin, Friends of Taunton Bay
Mark Peterson, Great Eastern Mussel Farms
Regina Rivard
Gloria & Leo Siegel
Gertrude Simmons
Peter Suber
Tonya Troiani

State agencies submitting written testimony:

Department of Environmental Protection

The comments have been summarized and are listed below. The general comments are presented in quotation marks to indicate clearly to the reader that they are individuals' comments. All other comments are not necessarily verbatim transcriptions; instead they are summaries of testimony that present the range of comment on particular sections.

General comments

"Until there are some reasonable limits on the number and location of aquaculture leases the current climate of public divisiveness will continue."

"The majority of these rules will improve the current process and should be adopted. I believe a comprehensive bay-wide planning and management program should be a necessary and vital component to keep ahead of problems that might arise otherwise."

"These rules could significantly improve current process and should be adopted."

"In summary, we do not necessarily object to the proposed changes. Most of our concerns focus on potential problems, depending on how the Department, or the courts, interpret them."

"On the whole, the proposed amendments . . . add some clarity to, and will provide greater consistency in the application of, regulations that in the past caused public confusion and frustration with their application. . . . In certain instances, however, the proposed changes only make a bad situation worse or, in the interest of setting specific numerical standards, set the bar too low."

Section 2.10 – Application Requirements

Support

The requirement to have a pre-application meeting is a good idea. We would request that there be provisions that would make the content of the meeting confidential so as to protect an applicant from competitors trying to put in an application for the same site.

The requirement to have a preapplication meeting is good, however the wording in 2.10 (1) should be changed in that section about coordinating with the Department of Environmental (DEP), to say "all state and federal regulatory requirements are identified." This is more accurate language, given the stage an application is at, and the fact that there are other agencies beside the DEP involved in the consolidated permit application.

> **Department response: Material discussed at the pre-application must be handled in accordance with the requirements of Maine's Freedom of Access law. The clarification on identification of regulatory requirements is a good suggestion to broaden and more accurately portray the purpose of the meeting. The language in 2.10 (1), paragraphs 2 and 3 has been clarified accordingly.**

The requirement to discuss both commercial and recreational navigation is important in the review of these applications.

The term "best available technology" is not static and is a good requirement. It allows for the introduction of new ideas and equipment. It does not hinder innovation.

We support the inclusion of a spill prevention and control plan (SPCP). You should use the SPCP rules that currently exist to evaluate these plans.

Oppose

The requirement to stipulate impacts on both commercial & recreational navigation is not needed. Navigation is navigation.

> **Department response: The clarification is reasonable and accurately portrays the present interpretation by the Department. See 2.10 (4).**

The requirement to use "best available technology" is problematic. Who and how do you evaluate this, and how do you test new technology in order to determine that it is the best with this kind of stipulation? If this means that equipment needs to be routinely updated to meet a changing standard then this could become financially unworkable.

All equipment, including vessels, should conform to best available technology.

Drop the last sentence of 2.10 (11) that requires an applicant to document the use of best available technology in order to eliminate any confusion that this is their obligation.

> **Department response: The intention of this provision is not to require that an applicant constantly upgrade their equipment, but that at the time a lease operation begins it is equipped with the best available technology to achieve its ends. The scope of this requirement is not intended to cover vessels, but rather the equipment and gear used on a site. The Department will not interpret this standard so as to inhibit innovation. Clarifying language has been added to this effect in section 2.10 (11).**

Do vessels need to have spill prevention & control plans for each site they visit? That is not practical. This should stipulate that a vessel should have one plan, not one for each site.

Spill prevention & control plans should be prepared and submitted in accordance with the existing statutory and regulatory requirements for such plans.

> **Department response: The requirement for a spill prevention & control plan is for the site, not a vessel. If a site is going to store petroleum products they are required to have a plan. The vessel that is visiting the site is not required to have a plan. See 2.10(11).**

We are concerned that the requirement to create plan drawings of proposed equipment configurations will lead to aesthetic considerations in the review of leases. This is a subjective, vague and unnecessary requirement. This will add substantial, unnecessary cost to the application as well.

You should include a requirement to have schematic drawings from two vantage points on riparian land within 2,500' of the proposed farm.

> **Department response: The plan drawings do not need to be architectural renderings or engineering diagrams per se. A schematic drawing that accurately shows dimensions and heights is sufficient, as is photographic renderings. These can be done at reasonable cost and will provide appropriate information to the Department and the public about the proposed farm. The Department does not support including the plan drawings from a land-based vantage point.**

We are concerned that the requirement to state how much vessel traffic will be coming from a site in an application will prohibit traffic not specifically enumerated or will be used by the public to voice concerns when actual traffic does not exactly match that proposed in the application. This needs some better clarity.

> **Department response: Information provided in an application does not bind an applicant. The information presented is to be used to evaluate the proposed scope and intensity of activity at the site and how that bears on the statutory criteria. The only way that vessel activity could be restricted would be if the permit itself were conditioned. This requirement does not make this any more or less likely, as this information has been routinely submitted with lease applications for years. See 2.10(11).**

There needs to be a requirement that all applicants show documentation of local harbormaster approval.

> **Department response: The rule language in this section clarifies that the Department requests comment on all the statutory criteria for the granting of a lease, and does not attempt to delegate the approval of aquaculture leases to municipalities. Such a delegation in this rule would not be supported by statute.**

There needs to be a definition of pollutant in Chapter 2 that is consistent with existing state law or that explicitly incorporates 38 MRSA § 361-A (4-A).

> **Department response: This is not necessary to meet the objectives of this chapter. A definition of discharge is sufficient to articulate these rules with NPDES permitting requirements.**

Section 2.15 – Notice of Lease Application & Hearing

Support

We support the creation of the public scoping sessions. There should be a requirement to hold them if more than 5 people request that one be held.

> **Department response: The Department does not support a mandatory trigger on the holding of public meetings. The discretion to decide when to hold a meeting is appropriate given constraints on Department resources. It is also reasonable for the Department to evaluate the nature of the public interest being expressed in a given application before deciding to hold a meeting.**

We support the changes and additions to new Section 2.15 (4).

Oppose

If you send out notice of a completed application before the site work, we are concerned that a proposed lease area could be spiked with commercial fishing gear or recreational traffic in order to give the Department a false impression during its site work of how the site is used.

> **Department response: Were such subterfuges to occur, the Department feels confident that personnel can realize this in their review of the application. As well, since the application has already been submitted with information on existing uses, there will be a reasonable record (attested to by the applicant) on which to compare sudden increased uses.**

Scoping sessions should be mandatory for all applications and never waived.

> **Department response: See statement above on public scoping sessions.**

The requirement for press releases is just a way to advertise for non governmental organization's (ngo's).

> **Department response: It is the Department's position that adding the press release provides for better public notice and involvement.**

An applicant can only be required to attend, not necessarily participate in a public scoping session. Change the wording in 2.15

> **Department response: Department staff recognizes the point about participation and attendance. Section 2.15 (2) has been clarified to address the suggested revision.**

There should be a requirement to notify landowners within 2,500' of the proposed project, as this is the distance at which landscape architects say is within the visual foreground. There are numerous examples in Maine law where the state has sent notice and/or other requirements related to siting facilities to meet the unique characteristics of the proposed project at distances other than 1,000 feet [e.g. 29-A MRSA §1108, 38 MRSA §563-A; 38 MRSA §490-Z; 12 MRSA §7432; 38 MRSA §1310-N]. As well the IF&W uses a half-mile buffer for impacts to eagle nesting areas, the DMR is using a ½ mile monitoring radius for debris, and the seascape is always apt to provide for long unobstructed views and for noise and pollutants to travel easier.

The 1,000' distance is arbitrary.

We do not support an increase from 1,000 to 2,500 feet for notification of riparian owners.

Notice of an application should be distributed to an area that corresponds to the impact of the proposed lease. If you want leaseholders to patrol for trash within ¼ mile, then notify landowners of an application within ¼ mile.

> **Department response: The Department understands the argument that directly affected riparians should be defined by any one (generally the longest) potential impact of the proposed lease – whether visual, auditory, or pollution. However it is not clear to the Department that this line of reasoning has any less degree of arbitrariness to it than the existing 1,000' distance. The cited examples in Maine law summarized above are a catalog of selected (and not necessarily comparable) separation distances – and not notification distances – all of which happen to exceed 1,000'. Each of these can be found to be arbitrary in its own right, whether greater than 1,000' or not – why is there a ½ mile separation zone for trapping from built-up areas [12 MRSA §7432]? Of similar note, there are an equal number of these separation distances in these same statutes below 1,000' that could reasonably be put forward for arguments sake, such as a 100' separation distance between a gravel pit and an adjacent landowner [38 MRSA §490-Z], where a gravel pit could be argued to have a larger, more permanent, impact than an aquaculture operation. And so on . . . .**
>
> **The relevant question in this discussion is NOT whether the particular distance for notification of riparians is 1,000' or 2,500', or a comparison of separation zones. The relevant question is whether the entirety of notification to all parties involved, directly affected by, or interested, in aquaculture is adequate.**
>
> **The Department is not convinced that an adequate case has been made to make this change, given that the present system of notification for aquaculture leases is comparable, or exceeds, in rule and present practice (cf. redesigned DMR notice ads for lease hearings and comment periods) notification for most, if not all, other types of development applications heard by either state government or municipalities. For example, any aquaculture lease receives the same or more notice than either an exempt (less than 20 lots) or non-exempt subdivision (more than 20 lots) under the Site Location of Development law or a dock or lobster pound under the Natural Resources Protection Act, to name a few examples from State agencies.**
>
> **The Department is very concerned that there be adequate public notice and has responded accordingly over the past year.**

You need to measure the 1,000' distance for riparian notification from the edge of the lease to low water mark.

> **Department response: A change to section 2.10 (3)(1) was adopted in August, 2002 that requires the determination of riparians be made to the mean low water line.**

Complete applications should be sent to all interested parties, not just named particular groups, whether they request notification specifically or not. The DMR should not be favoring one group over another.

We are concerned about the use of the word "relevant" to label associations or groups. If you do not notify a group that deems itself relevant, will this delay or postpone the processing of a lease?

The Department should maintain an "interested parties" list to receive all notices of hearings or meetings.

You might want to just say that you will send notice of completed applications to those organizations that request a copy, rather than making these distinctions here between trade and other organizations.

Department response: We are convinced that the present language on who to notify as of right for scoping sessions, completed applications, or public hearings is problematic and begs too many questions. As such the language has been revised to clarify that an individual or organization may request to be notified of any application, scoping session, or public hearing. The Department has always maintained an interested parties list, but it is now clearly laid out in rule, in a manner that is equitable and fair to all parties.

The language on notification in this section should include the Pilot's Association. If you notify a harbormaster, you should also notify the Pilot's Association. We are regulated by the Department of Transportation and should be considered a public agency that receives a review copy of the leases.

Department response: The Department agrees this is a good suggestion for the review of applications. There is not a need to specifically name state-licensed pilots or the Pilotage Commission in the notice section on public agencies, given its broad wording. To implement this suggestion, we have amended the standard agency review form to include the relevant state licensed pilot as an individual of whom we request comment on completed applications. See 2.15(2).

LURC and Indian tribes should be notified of applications within their jurisdictions.

Department response: LURC does not have jurisdiction over aquaculture leasing. The Tribes may request to be put on an interested parties list to receive applications in which they have an interest.

Neither for nor against

The word "adjacent" in section 2.15 (1) is unclear. Does this mean municipalities within 1,000'?

Department response: The Department recognizes that the word "adjacent" may be unclear. Section 2.15 (1) has been amended to provide that the notice shall be given to the officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts.

Section 2.37 - Decision

Support

We support the addition to Section 2.37(1)(1)(A)(2) & (6).

Oppose

The significant failure in this rulemaking in Section 2.37 is its rejection of the citizen's petition proposal to provide a more detailed explanation of the existing statutory siting conditions language for "other uses."

Department response: The Department currently considers "other uses" in the decision criteria in a manner that is consistent with the statute and prevailing case law. The Department is not narrowly or improperly focused in its review.

There should be a requirement here in 2.37(1)(1)(A)(6) that all genetically-modified organisms are considered "bio-insecure."

Department response: This rule provision is not the appropriate place to prescribe policy on whether genetically-modified organisms are to be reared at marine aquaculture sites.

Section 2.37(3) – Minimum Finfish Lease Site Separation

Support

The requirement to drop the waiver for the 2,000' separation distance is a good idea.

Oppose

We are troubled by the elimination of this waiver provision for two reasons. First it is unclear how this will affect the renewal of existing leases. It would be completely unfair were it to impact the renewal of an existing lease. Second, it is unclear how this will impact the ability of applicant's to find good lease sites particularly given the trend toward site rotation and fallowing.

What would happen if an applicant found several good sites, all to be used by one company, that were within 2,000' of each other and were going to be used in rotation or in line with existing biosecurity provisions. Wouldn't that be acceptable?

The Department should consider extending the separation distance to 1,000 meters to make it consistent with the currently proposed distance of concern for water quality impacts under draft MEPDES permit for finfish aquaculture.

Is the distance measured by water or land?

> **Department response: The Department recognizes the potential circumstances where site selection for new facilities could potentially be constrained by the minimum separation distance. As well, the option to have only sites owned or operated by the same company within a 2,000' range is understandable. However the reasonable basis of the separation distance for disease control is more compelling. We have, however, clarified that the minimum separation distance is not applicable to lease renewals, transfers, or new leases proposed in essentially the same area as a prior, terminated lease. We have added language that the distance is measured by water as clarification. See 2.37(3).**

Section 2.40 & 2.64 – performance bonds

Support

The requirement to increase the bonding is a good idea. This is a step in the right direction.

Oppose

The bonding requirements for mussel rafts (structure, no discharge) is not sufficient for larger leases where they could be up to a hundred mussel rafts. If a lease with that many rafts were to be granted, $5,000 would not be sufficient. You should prorate the bonding for these leases to the amount of gear on a site, for example $1,500 for each 400 square feet of gear.

The requirement to increase the bonding requirement would be workable if a company with multiple lease sites were able to hold one $25,000 bond that would apply to the entire company. That way, if any one site within the company were to go bust, then you could invoke the bond to clean up that site. Since bonds have been required no bond has been invoked to clean up gear, so the likelihood that the Department would have to use the bond on more than one site is highly unlikely.

The performance bond requirement should apply to each individual lease as it is reasonable to conclude that an individual or corporation could abandon several sites at a time.

Department response: The Department is convinced that the suggestion to apply one $25,000 performance bond for a structure, discharge lease to a particular company, or entity legally responsible for the conduct of aquaculture at the lease site, for up to 5 lease sites, is an effective compromise to this proposed change. Based on Department research into cleanup costs, the proposed increase to $25,000 is more than protective of the State for the removal or clean up of gear at any given site. Given the asset value of the equipment located at discharge farms, it is exceedingly unlikely that multiple sites (much less one) would be abandoned. As such, the increase in the size of the performance bond itself better protects the public because it is clearly sufficient to clean one or more sites itself, and the ability to aggregate the bond up to cover no more than 5 lease sites keeps the carrying costs comparable for the existing leaseholder.

The Department has added language that allows it to pro-rate a performance bond for a no structure, discharge lease if the size of the lease and the amount of gear is clearly larger than the ability of the minimum bond to cover clean up and remediation. This is responsive to the suggestion that a very large mussel raft lease could be inadequately covered by the $5,000 bond.

There should be an additional requirement that there be operating capital to support the first three years of an operation in addition to the performance bond.

Department response: The Department is not convinced that this is a legitimate or equitable requirement to place on a leaseholder. The present requirement to review financial and technical capacity of an applicant is sufficient based on the department's long-term experience with the leasing program.

Section 2.64 – Experimental Aquaculture Lease (application requirements & Department review)

Support

We support the proposed changes to Section 2.64.

There should continue to be differences in the information required for experimental and standard leases, as well as differences between lease applications for discharge and non-discharge operations. They are different types of operations with different impacts.

Oppose

Are you sure that the use of the word "document" in the new section 2.64 (2)(3)(B)(E) is the correct word legally? Are you asking them to document or verify?

Department response: The Department agrees that "verify" is appropriate and has made the change in the rule.

The language that defines an "area" is vague and ill-defined, and the wording is slightly confusing given the use of word area in different contexts. This concept can have potentially large impacts.

The definition of "area" should include a statement that it refers to a consideration of not just other aquaculture uses but all other uses in an area, such as recreation, tourism, cultural heritage, etc.

Department response: The language provides the Department with appropriate discretion to determine "area" for the purpose of the review. The Department does not support including recreation, tourism or cultural heritage in this category, as it is a review standard to determine the relationship of the proposed lease to all other existing aquaculture operations. It is not proposed to be a catch-all for evaluating all other uses.

The language has been changed from "lease area" to "lease site" and made "aquaculture activity" plural in this section to try and correct any confusion or minor inconsistencies. See 2.64(3).

Application requirements for all leases should be the same, whether they are experimental or not.

Department response: It is reasonable and appropriate to tailor application requirements (and the review thereof) to the scope and intensity of any particular type of activity. Because standard and experimental leases permit different size and extent of operations, we do not propose to make the two applications equivalent. There is clear statutory guidance for this distinction.

The language in 2.64 (2)(3)(E) should include "other recreational activities," not just fishing.

Department response: This change is not considered necessary. If an applicant should ignore or overlook an activity in a proposed lease area, that activity is likely to be noted by the now mandatory Department review for proposed leases, and or the harbormaster or warden review that is now routinely requested by the Department. Such activity also has the opportunity to be described through public input during the comment phase of the application process. (See 2.64(3) revisions).

There needs to be a cap on the amount of acreage that can be held as experimental leases just as there is for standard leases.

Department response: The Department considers the 250 acre cap listed in 12 MRSA §6072 to apply to the holding of any type of lease.

An experimental lease needs to have a requirement that the application demonstrate financial capacity, as is done with standard leases.

Department response: The complete application submitted by the applicant gives the Department an understanding of a lease applicant's background and expertise, but does not require a determination of financial capacity. The experimental lease program is designed to allow entry into the aquaculture field and to develop proposed operations on a limited scale to see if they are technically and commercially viable. Because experimental leases are small scale and only valid for three years, and require a performance bond for structures the Department is not convinced that financial capacity determination is a necessary additional requirement.

Section 2.75 – Minimum Lease Maintenance Standards

Support

This is a good requirement. There needs to be some clarification as to the ½ mile radius – does this mean that an applicant needs to only clean up gear that is within ½ mile? What if gear goes beyond that, are they then no longer responsible?

Oppose

The language is unclear on cleaning up gear and solid waste. The way this reads is that a lease holder is required to clean up all gear, regardless of whether it came from their site or note.

No distinction should be made in the rule between gear or waste from any particular company, as this could be used to avoid compliance with this rule.

It is not clear that this is the leaseholders responsibility and not the State's to do this work.

Department response: The second sentence in section 2.75(3) has been removed to clarify that it is only a leaseholder's gear that they are responsible for collecting, and to eliminate the confusion in interpretation. These changes are reasonable and appropriate clarifications and do not detract from the intent of the provision. See 2.75(3).

DEPARTMENT OF MARINE RESOURCES
Chapter 2 - Aquaculture Lease Regulations
2.10 Application Requirements for Standard Leases

1. Form. Aquaculture lease applications shall be submitted on forms prescribed by the Commissioner and shall contain all information required by applicable statutes, regulations in Chapter 2 and by the Commissioner for the consideration of the aquaculture project. Hearings on applications will not be held until both the applicant and the Ddepartment ~~has~~ have done the required environmental reviews, which may only be done between April 1 and November 15. ~~Applicants are advised to request hearing dates accordingly.~~

   An applicant shall attend a pre-application meeting with the Department prior to conducting field work and completing the application. The pre-application meeting shall be held in order to specifically define the environmental baseline or characterization requirements and other informational needs that the Department determines are necessary to adequately present the proposed lease for review.

   For discharge applications, the Department shall coordinate with the Department of Environmental Protection and other state and federal agencies to ensure that all state and federal regulatory requirements are identified.

4. A description of the commercial and recreational navigation uses of the proposed lease site, including type, volume, time, duration, location and direction of traffic.

11. Equipment. The applicant shall submit detailed specifications on all gear, including nets, pens, and feeding equipment to be used on the site. Vessels that service a site are not subject to this provision. This information shall include documentation that the equipment is the best available technology for the proposed activity. Where the Department determines in the review of the application that technological or economic limitations would make the use of such equipment unfeasible, a design, operational standard, management practice, or some combination thereof may be substituted to meet the intent of this provision.

    For any applications where petroleum products are to be used, a spill prevention control plan shall be provided with the application.

    Documentation shall include both plan and cross-sectional views and either schematic or photographic renderings of the generalized layout of the equipment as depicted from two vantage points on the water. The location of the vantage points from the proposed lease area shall be included in the application.

    The application shall also include information on the anticipated typical number and type of vessels that will service the proposed site, including the frequency and duration of vessel traffic.

2.15 Notice of Lease Application and Hearing

1. Notice of Completed Application

   At the time that an application is determined to be complete in accordance with Chapter 2.10(4), the Department shall forward a copy of the completed application to the known riparian owners within 1,000 feet of the proposed lease and to the officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts, as listed on the application.

2. Public Scoping Session

   The Department shall determine whether or not to conduct an informal public scoping session on the aquaculture lease application. Any public scoping session would be held in the municipality in which the proposed lease is located and be scheduled prior to the Department's site work. The purpose of a public scoping session shall be to familiarize the general public with the content of the application, to allow the public an opportunity to ask questions of the applicant and the

Department, and to provide the Department with information that can be used during field work or agency review of an application.

The applicant is required to attend a public scoping session on the application when one is held.

The Department shall provide notice of the scoping session to riparian landowners within 1,000' of the proposed lease as indicated in the application, and to officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts. All other interested individuals or parties may request to be placed on the Department's service list for notification of these meetings or other proceedings relating to the processing of aquaculture lease applications.

The Department will issue a press release to the print media regarding the public scoping session and shall also publish a notice in papers of general circulation in the area of the proposed lease.

3~~1~~. Personal Notice

At least 30 days prior to the date of the public hearing, the Department shall mail a copy of the notice of hearing, lease application and chart describing the lease area to the following persons:

1. Riparian owners as listed in the application;

2. ~~Municipality~~The municipality~~(ies)~~ or municipalities in which the lease area is located, or the proposed lease abuts;

3. The applicant~~, except that the applicant shall receive only the notice of hearing~~; and

4. Any public agency the Department determines should be notified, including but not limited to, State Planning Office, Department of Environmental Protection, Department of Conservation, Department of Inland Fisheries and Wildlife, Regional Planning Office, United States Coast Guard, and United States Army Corps of Engineers.

4~~2~~. Public Notice

The Department shall publish a notice of the ~~lease~~ public hearing at least twice in a newspaper of general circulation in the area affected unless otherwise prescribed by the Maine Administrative Procedure Act. ~~Notice of the hearing~~Such notice shall be published once at least 30 days prior to the hearing and a second time at least 10 days prior to the hearing. Notice of the public hearing shall also be published in a trade, industry, professional or interest group publication which the Department deems effective in reaching persons who would be entitled to intervene.

Public notice shall include the following information:

1. a statement of the legal authority under which the proceedings are being conducted, including reference to the Administrative Procedures Act, 5 M.R.S.A. §9051 *et seq.* and the aquaculture lease provisions of 12 M.R.S.A. §6072;

2. a short, plain statement of the nature and purpose of the proceeding and the nature of the aquaculture lease application;

3. a statement of the time and place of the hearing;

4. a statement of the manner and time within which applications for Intervention may be filed;

5. a statement of the manner and time within which evidence and argument may be submitted to the Department for consideration.

The Department shall also distribute press releases regarding the public hearing to print media outlets serving the area of the proposed lease application at least two weeks prior to the public hearing.

2.37 Decision

1. After review of the agency record, the Commissioner shall issue a written decision, complete with findings of fact and conclusions of law.

    1. The Commissioner may grant an aquaculture lease if he is satisfied that the proposed project meets the conditions outlined by 12 M.R.S.A. §6072 (7-A).

        A. Standards: In making his decision the Commissioner shall consider the following with regard to each of the statutory criteria:

            (2) Navigation. The Commissioner shall examine whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area. The Commissioner shall consider the current uses and different degrees of use of the navigational channels in the area in determining the impact of the lease operation. For example: A lease area adjacent to the usual course of a barge in tow shall be held to a stricter standard than one in an area frequented by only outboard skiffs. High tide "short cuts" shall not be considered navigational ways for the purposes of this section. Any surface structures that could be within 50' of a restricted channel at low tide must be marked with retro reflective tape and a radar reflector.

            (6) Source of Organisms to be Cultured. The Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices.

2.37(3) Minimum Finfish Lease Site Separation

For all lease applications granted after **[effective date of amendment]** all f~~F~~infish pen culture lease sites must be a minimum of 2,000 feet by water from any other finfish lease site located in Maine waters. This requirement does not apply to the renewal or transfer of an existing lease, or to the issuance of any new lease within the approximate boundaries of a prior, terminated lease, provided that the lease holder has entered into and is in compliance with a Department approved bay management agreement and is in compliance with all provisions of the Department's regulations in Chapter 24.

~~1. An exception may be granted when, by mutual consent, both parties agree to have their leases closer than 2,000 feet.~~

~~2. A written agreement between the parties must be submitted into the hearing record as evidence of the parties' consent. If a party wishes to withdraw such consent he/she may file a petition with the Commissioner asking that the neighboring lease be revoked, stating his/her reasons for the request. Upon receipt of such a petition, the Commissioner shall notify the lease holder whose lease is the subject of the request. At the request of either party, or on his/her own initiative, the Commissioner may schedule an adjudicatory hearing on the petition for revocation. The Commissioner shall issue a decision within 60 days of the receipt of the petition for revocation. The Commissioner may revoke the subject lease if he finds, based on evidence presented in writing or at the hearing, that the leaseholder violated the terms of his/her lease, or any applicable statutes or Department regulations, or if he finds revocation necessary to prevent the spread of disease or unhealthy conditions in the petitioner's lease site, or that revocation would be in the best interest of the State.~~

~~3. An exception may be granted if the applicant can clearly demonstrate flushing rates adequate to maintain water quality standards and to preclude sedimentation which may result from pen cage operations and the proposed lease is neither upstream nor down-stream from neighboring sites, but across the tide from them. Accurate hydrographic data will be required to establish the adequate flushing of the applicant's lease site.~~

2.40 Lease Issuance

2. Applicant Responsibilities. Within 30 days of the Commissioner's decision and prior to issuance of the lease, the applicant must complete the following requirements:

1. establish an escrow account or secure a performance bond in the amount required by the Department in the draft lease. The amount is to be determined by the nature of the aquaculture activities proposed for the lease site as follows:

Category of Aquaculture Lease:

No structure, no discharge	$ 500.00
No structure, discharge	$ 500.00
Structure, no discharge	~~$5,000.00~~
Total combined area of all structures on lease:	
≤400 square feet	$1,500
>400 square feet	$5,000
Structure, discharge	~~$5,000.00~~25,000

A single performance bond for a structure, discharge lease may be held to meet lease obligations for up to no more than 5 individual leases retained by a leaseholder.

The Department may prorate the performance bond amount for a structure, no-discharge lease where structures are in excess of 2,000 square feet in order to increase the bonding requirement to satisfy the requirements of these rules.

2.64 Experimental Leases

2. Experimental Aquaculture Lease Application Requirements

3. Required elements:

B. A description of the proposed lease by coordinates or boundaries (metes and bounds), total acreage, a map of the lease area and the adjoining waters and shoreline~~s~~, with a certified list of names and addresses of ~~the~~ riparian owners ~~upon which the experimental aquaculture lease activity would take place~~ indicated on the map as listed in the municipal tax records.

~~E. A signed statement from the local harbor master, Department Biologist, Marine Warden or Aquaculture Environmental Coordinator on fishing activity, moorings, navigational channels in the area and the use of the area by riparian landowners for ingress or egress.~~

E. A description of existing uses of the proposed lease area, including commercial and recreational fishing activity, moorings, navigation and navigational channels, and use of the area by riparian landowners for ingress and egress. The description shall include the type, volume, time, duration, location and amount of activity. A signed statement from a Department biologist or Marine Warden may be submitted to verify this information.

F. The written permission of every owner of intertidal land in, on or over, which the experimental activity will occur. If private property is to be used for access, written permission from the property owner must be provided with the application.

2.64(3) Department Site Review. The Department shall ~~may~~ inspect the proposed site and immediate areas to obtain ~~and~~ or verify information ~~on but not limited to~~ such as: the location of proposed lease boundaries; the general characteristics of the area, including bottom composition, depth and features; typical flora and fauna; numbers ~~of~~ or relative abundance of commercial and

recreational species; evidence of fishing activity; distances to shore; navigation channels~~,~~; moorings~~,~~; locations of any municipally, state, or federally owned beaches, parks, or docking facilities within 1,000' of the proposed lease site; and the amount and density of all other aquaculture activity in the area. For the purpose of this review, the area shall be considered to be a river, bay, estuary, embayment, or some other appropriate geographical area in order to adequately consider the potential impact of the amount and density of existing aquaculture activities and the proposed application.

If a proposed lease site is located in a jurisdiction that employs a harbormaster, the Department shall request information from the municipal harbormaster about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, ecologically significant flora and fauna, beaches, parks, and docking facilities in proximity to the proposed lease.

2.64(4) Notice of Application and Comment Period.

1. Notice of Completed Application.

At the time that an application is determined complete in accordance with 2.64(2)(5), the Department shall forward a copy of the completed application to the known riparian owners within 1,000 feet of the proposed lease and to officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts, as listed on the application.

2. Public Scoping Session

The Department shall determine whether or not to conduct an informal public scoping session on the aquaculture lease application. Any public scoping session would be held in the municipality in which the proposed lease is located and be scheduled prior to the Department's site work. The purpose of a public scoping session shall be to familiarize the general public with the content of the application, to allow the public an opportunity to ask questions of the applicant and the Department, and to provide the Department with information that can be used during field work or agency review of an application.

The applicant is required to attend and participate in a public scoping session on their application when one is held.

The Department shall provide notice of the scoping session to riparian landowners within 1,000' of the proposed lease as indicated in the application, and to officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts. All other interested individuals or parties may request to be placed on the Department's service list for notification of these meetings or other proceedings relating to the processing of aquaculture lease applications.

The Department will issue a press release to the print media regarding the public scoping session and shall also publish a notice in papers of general circulation in the area of the proposed lease.

3. Comment Period

Any person may provide the Commissioner with written comments on the experimental lease application. At least 30 days prior to the deadline for comments, the riparian landowners listed in the application and the ~~municipality(s)~~ municipality or municipalities in which the ~~activity would occur~~ proposed lease would be located, or the proposed lease abuts, shall receive a summary of the application, a statement on the manner and time within which comments maybe submitted to the Department and the process for requesting a public hearing. At least 30 days prior to the deadline for comments, the Department shall publish a summary of the application in a newspaper of general circulation in the area proposed for an experimental lease.

2.64(5)(1) Notice of Public Hearing. The Department shall publish a notice of the ~~lease~~ public hearing at least twice in a newspaper of general circulation in the area affected unless otherwise prescribed by the Maine Administrative Procedure Act. ~~Notice of the hearing~~Such notice shall be published once at least 30 days prior to the hearing and a second time at least 10 days prior to the hearing. Notice of the public hearing shall also be published in a trade, industry, professional or interest group publication which the Department deems effective in reaching persons interested in the lease hearing. The Department shall also distribute press releases to print media outlets serving the area of the proposed lease application at least two weeks prior to the public hearing. ~~Public notice~~ Notice of the public hearing shall include the following information:

2.64(10) Actions required of lease holder. After being granted an experimental lease, a lessee shall:

4. Establish an escrow account or secure a performance bond in the amount required by the Department in the lease. The amount is to be determined by the nature of the aquaculture activities proposed for the lease site as follows:

   Category of Aquaculture Lease:

No structure, no discharge	None
No structure, discharge	$ 500.00
Structure, no discharge	~~$5,000.00~~
Total combined area of all structures on lease:	
≤400 square feet	$1,500
>400 square feet	$5,000
Structure, discharge	~~$5,000.00~~25,000

   A single performance bond for a structure, discharge lease may be held to meet lease obligations for up to no more than 5 individual leases retained by a leaseholder.

   The Department may prorate the performance bond amount for a structure, no-discharge lease where structures are in excess of 2,000 square feet in order to increase the bonding requirement to satisfy the requirements of these rules.

2.75 Minimum Lease Maintenance Standards

1. Each lessee shall mark the lease in a manner prescribed by the Commissioner in the lease.

2. Each lessee shall maintain his aquaculture lease in such a manner as to avoid the creation of a public or private nuisance and to avoid substantial injury to marine organisms.

3. Each lessee is obligated for the routine collection and proper disposal of all errant gear, errant equipment, or errant solid waste from the lease site.